

June 18, 2009

Mr. Kirkpatrick called the special meeting of the Union Township Planning Board/Board of Adjustment to order at 7:00 p.m. The Sunshine Statement was read.

Members Present: Mr. Walchuk, Mr. Taibi, Mrs. Corcoran, Mr. Badenhausen,
Mr. Ryland, Mr. Nace, Mr. Ford, Mr. Kirkpatrick

Members Absent: Mrs. Dziubek, Mr. Bischoff

Others Present: Atty. Mark Anderson, Atty. Yolanta Maziarz, Carl Hintz, Kevin Smith,
Atty. Scott Carlson, James Woods, John McDonough, Joseph Staigar

Pilot Travel Centers LLC: Block 11, Lot 24.03, 68 Route 173 West: Mr. Kirkpatrick said he had listened to the recording of the June 11, 2009 meeting and signed the required Certification. Therefore, he was eligible to vote. Atty. Scott Carlson, representing Pilot, said that at the last meeting, it was determined that applicant should go back to the drawing board to resolve questions and concerns raised by the Board. He asked that James Woods, having been previously sworn, come forward to provide testimony on the current proposal. Mr. Woods presented an Exhibit which was marked A-10. He explained the differences from the previously submitted plan. Mr. Woods said a 16-foot wide island north of the eastern fueling station has been added. Truck parking has been reconfigured and there will be 47 truck spaces. The earlier plan had 54 truck spaces. Impervious surface coverage is slightly lower than the approved plan. Plants, stormwater management and the sand filter remain as shown on the approved plan.

Mr. Woods addressed Engineer Smith's letter dated June 17, 2009. He said the addition of the island has allowed Pilot to add more light poles that should assist in lighting a large expanse of pavement. The concern about the flat area adjacent to the curb has been addressed by regrading. The perimeter fence will be nine feet from the curb. A ten-foot wide area will be provided around the dumpster area for routine maintenance of basin plantings. Mr. Hintz was concerned that debris wouldn't make it to the dumpster. Applicant will comply with Mr. Hintz's request to alleviate the concern.

An Exhibit entitled Revised Site Plan was marked A-11. Mr. Smith's letter was marked A-12 and Mr. Hintz's letter dated June 18, 2009 was marked A-13. Mr. Woods addressed Mr. Hintz's letter. He said applicant would comply with the request for a better selection of plants. Plan will be modified to show that lighting will not impact neighboring property. Mr. Ford asked Mr. Hintz about a comment referencing a shift further to the west of the exit. Mr. Hintz said that was an older comment. Mr. Walchuk asked if the aforementioned nine-foot fence would be sufficient to keep a truck from hitting the curb. Mr. Woods responded. He said parking spaces are deep enough that trucks should not have to back up that far. Mr. Woods emphasized that applicant is limited by the size of the site. Mr. Walchuk asked if concrete precast stops might alleviate problems with trucks backing up too far. Mr. Staigar will address that matter.

Traffic Engineer Joseph Staigar, who had been previously sworn, began his testimony. Mr. Staigar had reviewed plans that had been prepared by Mr. Woods. Mr. Staigar gave an overview of revisions. He said there will be one-way circulation. The entrance will be located on the easterly side of the site. Mr. Woods described how traffic would flow throughout the site and the difference between this plan and that which was approved. Mr. Staigar presented an Exhibit entitled Proposed Plan Truck Stacking, dated June 17, 2009. It was marked A-14. Mr. Staigar gave an overview of that Exhibit. The Plan showed a more orderly circulation pattern that should relieve congestion. Mr. Kirkpatrick asked the number of trucks that could be stacked under existing conditions. Mr. Taibi said nine and Mr. Staigar agreed. Mr. Taibi asked what would prevent a truck from going counterclockwise out of the pinch point. Mr. Staigar said good signage could remedy the situation. Mr. Taibi asked if a counterclockwise flow study had been done. Mr. Taibi had asked at the last meeting that the facility be shut down to do a mock study. Mr. Staigar said that had not been done. Applicant is using engineering plans to do that study. Mr. Taibi asked if an electronic study had been done. Mr. Staigar said they had used truck turning templates to determine truck turning ability. Mr. Taibi voiced his disappointment that Pilot had not done an electronic study. He emphasized the methodology Pilot used had failed.

Mr. Ryland had a comment about the limited parking at Pilot sites, truckers leaving the fueling position and utilizing the bathroom. Mr. Kirkpatrick referenced the stop bar, a painted line which allows a trucker to pull forward from the fueling position and use the bathroom, wash their windshield, etc. Other trucks can proceed to the fueling position. Mr. Ford had questions about trucks being able to move easily through the site. Mr. Staigar indicated signage should facilitate circulation. Trucks would always be able to exit via the thru lane. Mr. Ford questioned the circulation of trucks using the last two or three eastern parking spaces. Trucks might have to pull into traffic in order to back into the spaces. Mr. Staigar did not anticipate a lot of activity with trucks using those spaces. Mr. Hintz asked if there would be sufficient area for a truck proceeding around the back to the north set of aisles to get out of the site. Mr. Staigar said "Absolutely". Mr. Kirkpatrick asked if turning templates were based on roadway templates. Mr. Staigar said "Yes". Trucks would be able to maneuver around the site more easily by utilizing those templates. Mr. Kirkpatrick asked about enforcement of directional signs at the site. Mr. Staigar said Pilot would authorize the State Police to enforce Title 39 rights. Presently, there is no enforcement at the site.

Engineer Smith emphasized the need for an exit sign near the proposed water quality basin, since the circulation has been changed to one-way movement. He said that signage to prohibit parking along the islands would be appropriate. Mr. Smith did not see a big problem with circulation. Mr. Kirkpatrick mentioned the relocation of a sign under the light fixture along the site perimeter. Mr. Staigar said there would be painted arrows indicating one-way traffic. He expressed his belief that the proposed plan is probably better than previous plans.

Mrs. Corcoran asked if there is sufficient room for trucks to turn around where the striping is shown beyond the island. If so, why not extend the island the whole way over where the striping is shown. The extended island would also be a good place for a sign. Mr. Staigar indicated that, as proposed, trucks could move easier. Mr. Smith recommended that the Board might like to see the island moved a little further east. He felt the shorter length would assist with circulation. Mr. Staigar said the distance could be split. Atty. Carlson said Pilot would be amenable to extending the island to the Board Engineer's satisfaction. Mr. Ford said that could change the location of lighting. Mr. Staigar agreed. He also told Mr. Taibi that Pilot had struggled with intricate ideas and attempted to fine tune the plan. Mr. Walchuk referenced the stop bar. He asked if there would be merit to putting a stop bar to protect the fence. Mr. Staigar explained why that wouldn't be necessary. Mrs. Corcoran asked about site damage to trees and the fence. Mr. Woods was called forward to respond. Mr. Woods described the trees on the site and said he had not taken notice of the condition of the fence. Mr. Kirkpatrick asked if that concern could be addressed with a condition that all landscaping, fencing, etc. be maintained in a serviceable condition. Mrs. Corcoran and Atty. Carlson were amenable to that condition.

Mr. Kirkpatrick noted that once traffic shifted to a counterclockwise situation, traffic making a left-hand turn off the Exit 12 ramp would have their vision blocked by trucks making a right-hand turn and queuing to get to the site. He asked how Pilot planned to remedy the situation. Mr. Staigar said the vehicle making a left-hand turn would have to wait. Mr. Kirkpatrick emphasized potential problems with long waits. Atty. Carlson interjected that the access remains unchanged from the approved plan. He said there have been discussions about the issue; however, it is Pilot's position that that discussion is ongoing and separate from the amendment to the site plan that is before the Board now. A cattle chute was discussed. That would need DOT approval. Pilot remains willing to post a bond for its construction. Mr. Kirkpatrick said the issue of posting a traffic safety officer was discussed. Atty. Carlson said Pilot was not amenable. Mr. Staigar said he did not know where an officer would be positioned. He said Pilot will continue working with DOT about the matter.

Mr. Ryland asked Atty. Anderson if there was anything the Board could do to alleviate the above-situation. Mr. Ryland said Atty. Carlson said it has nothing to do with the plan. It is separate from the amendment before the Board. He asked Mr. Anderson if that was procedurally correct. Atty. Anderson said he didn't think that was correct. He believes that the Board has the right and, possibly the obligation, to look at all aspects of the site plan. Atty. Carlson reminded the Board that there is no change in the access that was approved. Mr. Kirkpatrick said there was a requirement if Pilot was unable to obtain DOT approval, improvements would have to be made to Route 173. Mr. Staigar said Pilot had offered some off-site improvements, but that application was denied. Atty. Carlson recalled that site plan approval was contingent on getting NJDOT approval access and that approval is in place. Mr. Kirkpatrick said that Pilot has given testimony that their internal circulation didn't work as well as expected.

He thought if that information were given to DOT, they could reconsider the validity of the access permit. Mr. Kirkpatrick referenced Condition H of the original approval.

Atty. Anderson read from Condition H. Mr. Kirkpatrick said he does not think Pilot is in compliance with Condition H if there is a problem with vehicles exiting the Exit 12 ramp. Mr. Staigar said there has always been a problem at the ramp. Mr. Kirkpatrick said there is a problem by changing the location at which trucks enter the site. Atty. Carlson emphasized that Pilot has complied with all requirements and it is their position that a Municipal Board cannot impose a condition upon an applicant that cannot be met, particularly without State approval. Atty. Anderson asked Atty. Carlson what condition could not be met. Mr. Carlson said "Improvements to 173". He said if they cannot get a permit from DOT, it is impossible to meet the condition. Atty. Anderson agreed. Mr. Anderson said; however that Pilot had not demonstrated that it would be impossible to locate a traffic safety officer at the site so that remains on the table. Mr. Kirkpatrick said Pilot indicated they had no desire to do that. Atty. Carlson did not know if that condition could be imposed. If DOT should permit a traffic safety officer, that would be different and he understood. Atty. Anderson mentioned there may be other things. Atty. Carlson said he would not concede to that statement. Mr. Kirkpatrick said the issue had been identified at earlier Hearings at the time of the original application. Pilot offered some mitigative measures at that time. It was unclear whether Pilot would be able to obtain approval. Mr. Kirkpatrick said he believes the Resolution was worded generously enough that any solution would be satisfactory to the Board and could be worked into the overall site plan. A proposal to relocate the ramp further to the east was proposed.

Atty. Carlson did not opine as to whether or not there existed a safety issue with the ramp. He emphasized that Pilot has acted in good faith in trying to resolve issues and has shown a commitment to work with the Board. Mr. Kirkpatrick agreed. However, he needed assurance that people making left-hand turns could do that safely. Presently, trucks block oncoming traffic. If the entrance to Pilot is moved, a new safety hazard will be created. Mr. Staigar disagreed. He stated his reasons. Mr. Ford asked how many trucks could stack along Route 173 after making a right turn at the intersection. Mr. Staigar said "Two". However, most of time there will be one or less. Mr. Taibi asked if the concept of moving the Exit in line with the entrance to the site was brought up to DOT. Mr. Staigar said it was. They appeared to not be receptive. The Federal Highway Administration would have to be dealt with. Mr. Taibi said when Foster Wheeler was built the ramp was moved. Mr. Staigar said the ramp was shortened. Now, it would have to be moved. He said there would be a cost and a permitting issue. Mr. Taibi felt the issue should be looked into as a possible solution. Mr. Staigar said he and Atty. Carlson are willing to work with the Township to come up with a solution. Mr. Taibi asked how that could be put into words to satisfy the Board Chairman's concerns. Mr. Kirkpatrick asked Engineer Smith to compile a cost estimate for engineering, permitting and construction of relocating the ramp to be directly across from the Pilot entrance. Mr. Smith said it could be done. Mr. Kirkpatrick asked if Pilot would post a bond based on that amount.

Atty. Carlson indicated he would need to discuss the matter with Cathy Adkins, Pilot's Project Engineer. Mr. Kirkpatrick said he thought the Board's only concern was correcting or mitigating the safety issue. Atty. Carlson said he understood. Mr. Staigar said Pilot was not adverse to mitigation; however, he said it was not solely their problem. Other trucks use the intersection. Mr. Kirkpatrick said his concern was that vehicles making a left-hand turn onto Route 173 West can safely see past a truck waiting to enter the Pilot site. Atty. Carlson said he thought improvements would be best sought by the Municipality working with NJDOT. Mr. Ryland thought that Pilot was going to work on a solution, other than the cattle chute, which the DOT did not approve. Mr. Ryland that had not been mentioned until tonight.. Mr. Kirkpatrick emphasized the importance of something being done in a timely fashion before someone gets sideswiped. Atty. Carlson said there is nothing to guarantee the State will approve a design of any sort. He said they have approved the proposed design. Mr. Ford offered an idea. It was to take the entrance right next to the exit and bring trucks straight across the intersection. Mr. Staigar said that was an option that Pilot would look at. He felt it had some merit.

Atty. Carlson announced that Cathy Adkins had arrived. A brief recess was taken in order that Mr. Carlson could apprise Ms. Adkins of earlier discussion tonight. Atty. Carlson said the site is well under construction and it is important that Pilot proceed with the construction. Mr. Carlson said the idea offered to relocate the ingress with the Route 78 ramp would require a new DOT permit. He said Pilot is not necessarily adverse to the concept and would be willing, as a condition of approval, to submit an access permit to DOT. He hoped the Board and its Chairman would try to assist in obtaining approval. Mr. Kirkpatrick thought the Board would be amenable to that and a number of different solutions. Atty. Carlson said he could not guarantee anything could be done on Route 173, nor did he think Pilot could be expected to do that under the Municipal Land Use Law. He said Pilot has tried to find a solution. Mr. Taibi asked why a new permit would be required since the same exit ramp and same entrance would be used. Mr. Hintz said new curbing would be required and that would require DOT approval. Mr. Smith said the current egress would be closing. Mr. Staigar said that would require a new permit. Mr. Taibi understood. He mentioned the idea put forth by Mr. Ford that would line the entrance up with Exit 12. Atty. Carlson said that might be the solution. Mr. Ford said it is important to the Board that the safety either be maintained or improved.

Atty. Carlson understood the Board's concern; however, he said Pilot is not responsible for the operation of Route 173. Mr. Kirkpatrick said he didn't think the Board would have approved the counterclockwise circulation unless the Route 173 issue was resolved. Mr. Carlson said it seemed to him that Pilot had approval. Mr. Kirkpatrick thought the Board's favorable decision was based on some off-site mitigation in order that people could move off the Route 173 ramp. Mr. Staigar referenced the permit that Pilot has in hand and is depicted on Exhibit A-7. He said Pilot is offering a better plan as shown on Exhibit A-11.. Mr. Kirkpatrick said he understood that Pilot was offering no guarantee that anything will be done to improve safety.

Atty. Carlson said Pilot could not make that guarantee. Mr. Kirkpatrick mentioned a traffic safety officer as a possible solution. Atty. Carlson did not see that as a solution. Mr. Kirkpatrick cited two areas where traffic safety officers were utilized. They are in Morristown and Livingston. Mr. Staigar said he was familiar with both sites. He didn't know how that situation could be produced at this location. Atty. Carlson said Pilot would not provide a traffic officer on Route 173. Mr. Kirkpatrick asked if Pilot would implement posting an officer if DOT suggested that as a solution. Atty. Carlson said he could not say they would or would not. Mr. Carlson said he would not guarantee that Pilot would place an officer on their property. Mr. Taibi asked about placement of a light. Mr. Carlson understood there had been a discussion at one time. Mr. Staigar said DOT doesn't like traffic lights so close to one another. He said it was not out of the question. Mr. Staigar said Pilot would look at other options, including moving the driveway and/or the ramp. Atty. Carlson suggested submitting an application for a new curb cut showing the new ingress and setting a meeting with appropriate people at DOT. Also, DOT could be asked about other solutions. Mr. Kirkpatrick thought the range of options should be discussed with Engineer Smith and determine which had a likelihood of approval and which was the most expensive to implement. A bond would be posted on the most expensive option. Atty. Carlson said Pilot would be responsible for their fair share and would post that amount. Mr. Kirkpatrick said that sounded reasonable to him.

Engineer Smith commented. He was uncertain whether the relocation of the driveway could be physically worked out to submit an application to DOT. Mr. Smith thought the traffic light might be the best solution. Atty. Carlson agreed with Mr. Smith about the driveway. Mr. Kirkpatrick said that was why he suggested meeting with Mr. Smith. Mr. Smith said he understood that he and Pilot representatives should come up with a potential solution and make application to the DOT. Mr. Kirkpatrick asked Mr. Smith to play a significant role in the matter. The cost estimate and bond amount was discussed. Atty. Anderson apprised the Board about Fair Share. He agreed with Atty. Carlson and Mr. Staigar that it is typically based on an analysis of traffic flow. Mrs. Corcoran pointed out that the proposed new entrance would preclude separation of cars and trucks. Mr. Staigar agreed. He said signage would be required. Atty. Carlson asked for clarification of that condition. Mr. Kirkpatrick said Atty. Anderson would prepare final wording. Pilot would meet with the Township Engineer and develop different solutions, including the fair share amount required.

Atty. Carlson asked Pilot's Planner John McDonough to provide testimony. Mr. McDonough, having been previously sworn, gave an overview of variance relief sought. He said all variances are either the same as or better than those that were previously approved and/or better than existing conditions. Mr. McDonough reviewed Mr. Hintz's letter. He said applicant will comply with landscaping at the northern end of the property, as requested by Mr. Hintz. Atty. Carlson said he had nothing further. He asked for questions from the Board. There were none. Mr. Kirkpatrick asked for comments/questions from the Public. There were none. Mr. Kirkpatrick asked for discussion among Board members on how to proceed with the application.

Mr. Ryland asked about Fair Share. Mr. Kirkpatrick said Fair Share has legal meaning and is subject to interpretation. Mr. Nace asked what would happen if no changes were approved. Mr. Kirkpatrick said a bond would be posted to insure some type of improvement. Atty. Carlson said he did not know how much time it would take to calculate Pilot's Fair Share. He asked that the CO not be conditioned upon obtainment of the amount of the bond. Atty. Anderson said the Board loses jurisdiction in some respects, after a CO is issued. Mr. Anderson believed that it was realistic to determine the bond amount before Pilot would request the CO. He thought Pilot would be able to post the bond in a short time. Atty. Carlson agreed. He said, however, that it is a very large risk for Pilot to leave that condition open ended. Mr. Carlson asked about a time limitation. Mr. Kirkpatrick said it was a very big risk for the Municipality to proceed without any improvements to Route 173. Atty. Anderson asked that Engineer Smith provide a time limit. Mr. Smith indicated that it would take approximately a month. Atty. Anderson asked when Pilot might be seeking a CO. Ms. Adkins provided information. She said it would probably be eight weeks from approval. Atty. Carlson asked that if it took longer than eight weeks, could Pilot post a bond in the amount of \$75,000, pending Mr. Smith's final determination. Mr. Kirkpatrick asked for a quick calculation. Mr. Smith said it could be more than \$75,000. Atty. Anderson suggested that the Resolution state that the bond has to be posted before the issuance of a CO. If Pilot was unable to comply with that condition the issue would be revisited by the Board. Applicant could return to the Board and ask for a change to that condition. That change might be posting of a specific dollar amount, as suggested.

Atty. Carlson asked time to confer with his client. Atty. Anderson stated conditions of a Resolution. The amount of the bond has to be calculated and posted before issuance of the CO. If Pilot finds that cannot be accomplished they have the right to come before the Board and ask for relief from that condition. The bond amount will be determined by the Township Engineer as applicant's Fair Share of either the realignment of access or rearranging site features, as necessary. Pilot, DOT and the Municipality will ultimately determine the improvement. Mr. Smith will have to select what he thinks is the most reasonable application to make to DOT and then estimate the cost for that solution. Mrs. Corcoran asked if solutions included realigning the ramp and a light. She said it didn't sound that way. Mr. Kirkpatrick said it's unclear what the solution might be. Atty. Carlson said he understands they are not off the table. Mr. Kirkpatrick agreed. He said posting of a traffic officer is off the table at this point. Mr. Ford said he was concerned about the definition of Fair Share". Mr. Kirkpatrick said it is a legal definition. Mr. Ford had a hypothetical question. Does Fair Share just come from trucks or is it open for discussion. Mr. Kirkpatrick said he was sure it would be opened for discussion. Mr. Ford asked about another stipulation. Could the Share be based solely on truck traffic and its destination. Mr. Taibi said there isn't a safety problem without a truck. Why wouldn't it be the percentage of trucks that go to Pilot as opposed to the overall number of trucks? Atty. Anderson said he did not know the answer. He emphasized Fair Share is based on an engineering analysis and the impact that the facility creates on the road.

Mr. Taibi said the Board didn't want to be here arguing the points two months from now so why not define Fair Share today. Mr. Kirkpatrick said the Board is limited to -- requiring that Pilot only do their Fair Share. Mr. Ford asked Atty. Carlson if he would agree to a definition of Fair Share. Mr. Carlson said he would not. Mr. Kirkpatrick said the Board could not define that term. Mr. Kirkpatrick asked conditions and changes. He assumed all conditions of the original site plan would be carried forth. Atty. Anderson said he believed the Board would expect those conditions be carried forth. He said there was the question of the directional sign for the bypass lane and scale. Additional signage and ground paint would be developed to the satisfaction of the Board, as determined by the Board's Engineer. Mr. Anderson is certain that the Title 39 issue is conditioned with the existing site plan. The smaller island will be extended easterly to the Township Engineer's satisfaction. All fencing and landscaping will be maintained in a serviceable condition. Atty. Anderson said there is the bond issue. Mr. Ford said applicant stated they would make the fence a minimum of nine feet. Mr. Taibi said there was an issue with the lighting with the new island. Grading will be provided around the retention basin to create a level grass area. Applicant will comply with recommendations in letters from Messrs. Hintz and Smith. Mr. Smith recommended a guide rail and it was resolved that there would be a widened area, obviating the need for the guide rail. A maintenance strip will be provided by the dumpster. Landscaping and plantings to be modified, as required by the Township Engineer. A lighting plan to be submitted showing there is no light spillage on the property. Signage and painting will indicate the location of the scale and bypass lane.

Atty. Carlson excused himself to discuss above issues with his client. There was a brief recess. Mr. Carlson returned and said that Pilot wouldn't agree to the open-ended bond issue. It was a risk they were unwilling to take. Atty. Carlson said Pilot would commit \$100,000 to off-site improvements. Mr. Kirkpatrick said it might be better to come back next month to discuss the appropriateness of the \$100,000. Atty. Carlson said he was not authorized to extend the application further. It was determined that the application was submitted on May 21, 2009 and the Board has 45 days to make a decision. Atty. Anderson said that would be July 6, 2009.

Mr. Walchuk made a motion to defer until the next regular meeting of the Board which is June 25, 2009, in order for the Board to have sufficient time to evaluate and review everything that has been said tonight and to not make a vote at this time on the application. Mr. Ford seconded the motion.

Vote: Ayes: Mr. Walchuk, Mr. Ford, Mr. Taibi, Mrs. Corcoran, Mr. Badenhausen,
Mr. Ryland, Mr. Nace, Mr. Kirkpatrick.

Motion to Adjourn: Mr. Ford made a motion to adjourn. Mrs. Corcoran seconded the motion. (10:15 p.m.)

Vote: All Ayes

Grace A. Kocher, Secretary

